at the time the registrar's caveat was requested to be entered may well have exceeded the market value of the land especially because of the slump in the value of land. If the value of the debts covered by the charges was in excess of the value of the land then no question of 'securing that the land will be able to satisfy the whole or any part of the debt due to the Federation by the landowner' arose. In this case it is clear the registrar did not know the value of the government debt, nor did he know the value of the debts covered by the charges. He may have known the market value of the land but that alone is not enough. With respect, the decision to enter the registrar's caveat was based on insufficient facts.

In taking either view of the two perspectives of the registrar's discretion under the ultra vires doctrine, my conclusion is that the discretion was not properly exercised. And I therefore had it set aside and allowed the application with costs.

Appeal allowed.

Solicitors: *Shook Lin & Bok.*

Reported by *Teo Keang Sood*

Tan Lay Soon v Kam Mah Theatre Sdn Bhd

Malayan United Finance Bhd v Tan Lay Soon

HIGH COURT (PENANG) — CIVIL SUIT NO 22-226-89 AND ORIGINATING MOTION NO 66-89
EDGAR JOSEPH JR J
27 MARCH 1990

Land Law — Caveats — Removal of — Application by registered proprietor and chargee under ss 326 and 327 of National Land Code 1965 — Action by caveator for specific performance claiming interest as purchaser under alleged contract of sale of land between caveator and registered proprietor — Whether caveat should be removed prior to adjudication of action for specific performance

The defendant had charged the lands to the chargee for securing the repayment of loan moneys. The defendant defaulted with repayment of the loan and the chargee commenced foreclosure proceedings to enforce the charge. In doing so, it obtained notice of two caveats lodged by the plaintiffs some five years after the registration of the chargee's charge. The defendant and the chargee brought applications to remove the plaintiff's caveats.

The plaintiff claimed a caveatable interest on the basis of an alleged binding and concluded agreement contained in the defendant's letter dated 10 March 1989 ('the letter'). Pursuant to the letter, the plaintiff had written to the defendant's solicitors and forwarded a cheque for the deposit referred to in the letter and enclosed a formal sale and purchase agreement. The plaintiff received no response from the defendant despite several reminders. The defendant's solicitor finally replied and informed the plaintiff that the deal was off. The plaintiff then issued a claim for specific performance of the alleged agreement.

The defendant claimed that the agreement to sell the lands was subject to a formal sale and purchase agreement to be entered into, and as no such agreement was concluded, there was no binding agreement between the parties. In addition, the defendant alleged that the parties had failed to agree on two of the terms contained in the draft sale and purchase agreement.

The chargee contended that their charge was created more than five years before the agreement and it was clear that the plaintiff had notice of the prior interest of the chargee and had chosen to ignore the same. The plaintiff contended that the defendant was estopped by their actions from relying on the failure to execute the sale and purchase agreement. As regards the chargee, the plaintiff contended that he was entitled to redeem the charge.

Held, dismissing the applications of the defendant and the chargee but ruling that the caveat is to remain in force until the plaintiff's claim for specific performance is adjudicated on:

(1) When an application to remove a caveat is made by the registered proprietor of the land, it is for the caveator to satisfy the court that there are sufficient grounds in fact and in law for continuing in force the caveat. A registered chargee who applies for the removal of a caveat stands in the same position as a registered proprietor.

(2) Having regard to the facts, the plaintiff's claim as caveator did disclose a serious question to be tried as to whether

there was any contract at all. As regards the chargee's application, the plaintiff had also succeeded in showing a triable issue as between himself and the chargee.

(3) In dealing with applications for the continuance in force of or the removal of caveats against dealing in lands, it is desirable that the court allows parties the fullest opportunity to litigate any matter in dispute between them. Having regard to the relevant principles, the balance of convenience, the interest of all parties concerned and how best they may be protected, and keeping in mind the foreseeable positions at the final hearing, considerations of hardship in the meantime and other relevant discretionary factors, the court was satisfied that there were sufficient grounds for continuing in force the caveats and preserving the status quo until the plaintiff's claim for specific performance was adjudicated upon.

[*Editorial Note*: The applicant in Originating Motion No 66-89 has appealed to the Supreme Court vide Civil Appeal No 02-197-90.]

Cases referred to

1 *Eng Mee Yong & Ors* v *V Letchumanan* [1979] 2 MLJ 212 (folld)
2 *Hajjah Rajiah bte Haji Man* v *Tai Cheng Finance Bhd* [1987] 2 CLJ 154 (folld)
3 *Love & Stewart* v *S Instone & Co* (1917) 33 TLR 475 (refd)
4 *Harichand Mancharam* v *Govind Luxman Gokhale* (1922) LR 50 Ind App 25 (refd)
5 *Eng Ah Mooi & Ors* v *OCBC* [1983] 1 MLJ 209 (folld)
6 *Jit Kaur* v *Parl Singh* [1974] 2 MLJ 199 (refd)
7 *Macon Engineers Sdn Bhd* v *Goh Hooi Yin* [1976] 2 MLJ 53 (refd)

Legislation referred to

National Land Code 1965 ss 326(1), 327(1), 340(1)

RR Sethu for the plaintiff.
M Davis Morais for the defendant.
Chen Mun Peng (Miss) for the applicant in Originating Motion No 66-89.
RR Sethu for the respondent in Originating Motion No 66-89.

Cur Adv Vult

Edgar Joseph Jr J: This was an application under s 326(1) of the National Land Code 1965 ('the Code') by a registered proprietor Kam Mah Theatre Sdn Bhd ('the registered proprietor') for the removal of a caveat lodged against certain lands comprised in (a) Pegangan No 1095, mukim 12, DBD Penang, (b) lot no 1610, mukim 12, DBD Penang held under Grant Mukim No 79 and (c) lot no 1611, mukim 12, DBD Penang held under Grant Mukim No 80 ('the said lands'). It was heard together with a similar application under s 327(1) of the Code, being Originating Motion No 66-89, by a chargee Malayan United Finance Bhd (now known as MUI Finance Bhd — 'the chargee'), of the said lands as the two matters were intimately connected.

In considering both these applications, I had reminded myself of the general principles which are applicable; they are conveniently enunciated by Lord Diplock in the Privy Council case of *Eng Mee Yong & Ors* v *V Letchumanan*[1] at p 215 as follows:

> ... a distinction must be drawn between cases where the applicant is the registered proprietor of the land (ie the caveatee) and cases where the applicant is some other person who claims a right to an interest in it. In the former case, the caveatee can rely upon his registered title as prima facie evidence of his unfettered right to deal with the land as he pleases; it is for the caveator to satisfy the court that there are sufficient grounds in fact and law for continuing in force a caveat which prevents him from doing so ... It is otherwise when the applicant under s 327 is someone other than the caveatee. He has no registered title to rely upon as prima facie evidence of his interest in the land. It is for him to begin by satisfying the court that there are sufficient grounds in fact and law for treating him as a person claiming such an interest in the land as would, if it were established, make him aggrieved by the existence of the caveat ...

I would interpolate, to say, that a registered chargee who applies for removal of a caveat is in the same position as a registered proprietor (see s 340(1) of the Code) and so has his registered title to rely on as prima facie evidence of his interest in the land. (See *Hajjah Rajiah bte Haji Man* v *Tai Cheng Finance Bhd*[2] at p 155.)

In *Eng Mee Yong*'s case,[1] also at p 215 cols 1 and 2 Lord Diplock added:

> ... in s 327 (of the Code) it is provided that 'the court ... may make such order on the application as it may think just'. The guiding principle in granting an interlocutory injunction is the balance of convenience; there is no requirement that before an interlocutory injunction is granted the plaintiff should satisfy the court that there is a 'probability', a 'prima facie case' or a 'strong prima facie case' that if the action goes to trial he will succeed; but before any question of balance of convenience can arise the party seeking the injunction must satisfy the court that his claim is neither frivolous nor vexatious; in other words, that the evidence before the court discloses that there is a serious question to be tried. *American Cyanamid Co* v *Ethicon Ltd* [1975] AC 396.

The material facts to be garnered from the affidavit evidence may be stated briefly. On 13 June 1984, the registered proprietor of the said lands had charged them to the chargee for the purpose of securing the repayment of a loan of $1,500,000 together with interest thereon on terms appearing in the charge.

The registered proprietor ('the chargor') having defaulted with repayment of the loan, the chargee took the usual preliminary steps with a view to commencing foreclosure proceedings to enforce the charge. In doing so, its attention was drawn to the two private caveats aforesaid, both lodged on 12 April 1989; that is to say well nigh five years after the registration of the charge aforesaid. The caveatable interest alleged by the caveator Mr LS Tan ('the caveator') in the case of both caveats was that by a binding and concluded agreement ('the alleged agreement') contained in the registered proprietor's letter on its note-paper dated 10 March 1989 ('the letter') the regis-

tered proprietor had agreed to sell to him the said lands at a total consideration of $1,861,884. It was said that the caveator had entered into the alleged agreement as trustee for Grand Central Enterprise Sdn Bhd, though this fact was not disclosed therein; however, nothing turns on this.

In order to elucidate the issues which arise for decision, I must reproduce the crucial contemporary documents, including the correspondence in the case, showing what they say. The alleged agreement contained in the letter from the registered proprietor to the caveator (with emphasis supplied) was in the following terms:

Kuala Lumpur
10 March 1989

Dear Sirs

Lot nos 1095, 1610 and 1611, mukim 12,
South West District, Penang

This letter serves to confirm that we have agreed to sell the following properties:

Particulars of title	Pegangan No	Gross area surrender (sq ft)	Net area surrender (sq ft)
1 Perakuan pendahuluan mengenai hakmilek (advance certificate of title) mukim 12, Daerah Barat Daya, Balik Pulau Negeri Pulau Pinang.	1095	106,412	84,961
2 - ditto -	1610	111,895	98,553
3 - ditto -	1611	125,507	17,362
	Total	343,814	200,876 (approx)

to you as trustee at Malaysian ringgit nine (M$9) only per sq ft of the total net saleable area of 200,876 (more or less) sq ft in consideration of your payment of a deposit sum of Malaysian ringgit ninety thousand three hundred and ninety four and cents twenty (M$90,394.20) the receipt of which is hereby acknowledged upon terms and conditions as follows:

1 that the purchase price is at Malaysian ringgit nine (M$9) only per sq ft of the net saleable area of 200,876 (more or less) sq ft;
2 that the aforesaid lands shall be free from all encumbrances;
3 that the purchase price shall be paid as follows:
   (i) 15% of the purchase price on or before 18 March 1989 (which shall include the 5% paid hereinbefore);
   (ii) another 30% of the purchase price on or before 18 April 1989;
   (iii) another 30% of the purchase price on or before 18 May 1989;
   (iv) another 25% of the purchase price on or before 18 June 1989;

provided that the sale and purchase agreement shall incorporate all the terms and conditions herein and other usual terms and conditions on or before 18 March 1989; otherwise the aforesaid sum of $90,394.20 (equivalent to 5% of the purchase price) shall be refunded to you free of interest without demand forthwith;

4 that the vendor's solicitors shall be stakeholder for 5% of the purchase price for the payment of real property gain tax (if any) and the vendor shall provide a bank guarantee to the purchaser's solicitor;
5 that the purchaser's solicitor is authorized to pay the total proceeds of the sale to Malayan United Finance Bhd or any financial institution for the purpose of discharging the aforesaid properties for completion of sale and purchase of the aforesaid properties. In the event that the payment of the aforementioned sum is insufficient to redeem the said properties from the said finance company or any financial institution, then the vendor will pay the additional sum for the purpose of enabling the aforesaid properties to be discharged and redeemed from Malayan United Finance Bhd and or other financial institution;
6 all payments will be paid in accordance to the schedule above referred to. Any defect in payment in accordance to the schedule above written, the vendor is entitled to forfeit the sum equivalent to 10% of the purchase price;
7 that each party shall bear their own respective solicitors' costs;
8 that all stamp fees and registration fees for the transfer of the properties shall be borne by the purchaser;
9 that the vendor shall bear all incidental charges costs and expenses for securing the discharges of the charges to Malayan United Finance Bhd in respect of the properties.

Yours faithfully,
Kam Mah Theatre Sdn Bhd
sgd Yap Chin Chuan
(Authorized representative)

On 11 March 1989, the caveator wrote to the solicitors for the registered proprietor forwarding his cheque for $93,094.20 being the deposit referred to in the alleged agreement, and at the same time, forwarding a draft of the formal sale and purchase agreement. (See exh YYC3 to encl 8.)

Not having heard from the solicitors for the registered proprietor, the caveator sent to them a reminder dated 15 March 1989 (p 1 of exh YYC4 to encl 8) as follows:

Dear Sirs,

Re sale and purchase of properties etc

We refer to our letter dated 11 March 1989 with respect to the purchase of the abovementioned properties and are obliged to point out that the sale and purchase agreement has to be approved and then executed on or before Saturday 18 March 1989.

Your clients, M/s Kam Mah Theatre Sdn Bhd have undertaken to deliver to you our aforesaid letter, draft agreement and cheque. We are informed that the same have been delivered to you.

Yours faithfully,
Sgd LS Tan

As the reminder evoked no response, the caveator wrote a further letter dated 18 March 1989 (p 2 exh YYC4 to encl 8) to the solicitors for the registered proprietor as follows:

Dear Sirs,

Re sale and purchase of properties etc

We enclose herewith the following:

1 sale and purchase agreement in quadruplicate duly signed by our Mr Tan as trustee;
2 our clients' cheque No CKB 719948 for the sum of M$2,700 (M$93,094.20 — M$90,394.20) being short payment of the 5% of the purchase price referred to in cl 2(a);
3 our cheque No SC 745262 for the sum of M$186,188.40 being the 10% of the purchase price payable under cl 2(b) of the Sale and Purchase Agreement;

for you to do the needful.

We confirm that all the terms and conditions of the sale and purchase agreement have been agreed to between our Mr Tan and your Ms Sar except for cl 17 for which instructions thereon have to be sought by you from your clients.

If your clients are agreeable, kindly return to us the sale and purchase agreement duly signed for us to carry out the stamping. The deadline for execution of the aforesaid agreement is 18 March 1989.

Kindly acknowledge receipt by signing on the duplicate copy of this letter.

Yours faithfully,
Sgd LS Tan

Then, on the same day, the solicitors for the registered proprietor replied by letter (p 3 exh YYC4 to encl 8) as follows:

Dear Sirs,

Sale and purchase of properties etc

We acknowledge receipt of your letter of even date together with the enclosures stated in para 1 thereof.

In reply to para 2 of your letter, we wish to confirm that we have informed your Mr Tan this morning that cl 3 of the agreement is also subject to our client's instructions that the same is acceptable to them. Accordingly we are taking our client's instructions on cll 3 and 17 of the agreement.

Yours faithfully,
Sgd Shearn Delamore & Co

Upon receipt of the letter from the solicitors for the registered proprietor, the caveator, also on the same day, wrote a letter (p 4 exh YYC4 to encl 8) on the assumption that there was a subsisting contract, as follows:

Dear Sirs,

Re sale and purchase of properties

We thank you for your letter dated 18 March 1989.

We would be much obliged if you could let us have a copy of the redemption advice from M/s Malayan United Finance Bhd that your Ms Sar Sau Yee confirmed on 17 March 1989 and again on 18 March 1989 to have received for our record.

Our Mr Tan was also additionally informed repeatedly by your Ms Sar Sau Yee that your clients have advised you that they have received the letter of confirmation from the authority that the notice to acquire the six thousand (6,000) sq ft hitherto has been withdrawn. We have repeatedly asked for sight of the advice of withdrawal from the authority but this still remains outstanding at date of this letter.

Kindly acknowledge receipt on the duplicate copy of this letter.

Yours faithfully,
Sgd LS Tan

However, the solicitors for the registered proprietors wrote to the caveator a letter dated 21 March 1989 (p 5 exh YYC4 to encl 8) — three days *after* the date fixed for execution of the formal sale and purchase agreement — stating as follows:

Dear Sirs,

Re sale and purchase of properties

We refer to your letter dated 18 March 1989 (received by us on 20 March 1989) and to the telephone conversations with your Mr LS Tan yesterday and today.

We wish to inform you that to date we have yet to receive our client's specific instructions on the terms and conditions of the sale and purchase agreement forwarded to us on 18 March 1989. As soon as we receive final instructions we shall revert to you on your said letter.

Yours faithfully,
Sgd Shearn Delamore & Co

And then, on 23 March 1989 — five days after the date for execution of the formal sale and purchase agreement— the solicitors for the registered proprietors wrote a letter (p 6 exh YYC 4 to encl 8) to the caveator stating, in effect, that the deal was off and returning the deposit and the caveators' two cheques. That letter was as follows:

Dear Sirs,

Re sale and purchase etc

We refer to our letter of 21 March 1989.

We regret to inform you that our clients' instructions are that they do not accept and agree to the conditions of the proposed agreement thereof in pursuance of cl 4 of the terms and conditions of tender, and as instructed by our clients, we return herewith your two (2) cheques Nos 719948 and 745562 for the respective sums of $2,700 and $186,188.40 and the four (4) copies of the proposed sale and purchase agreement. We further enclose our cheque for the sum of $90,394.20 being the initial 5% paid to us as stakeholders.

Yours faithfully,
Sgd Shearn Delamore & Co

The caveator then through his solicitors sent to the solicitors for the registered proprietor a letter before action, and, on 15 May 1989, the caveator caused to be issued the writ herein accompanied by a statement of claim praying for specific performance of the alleged agreement and for the usual consequential orders.

By their defence, the registered proprietor contended that although it had agreed to sell the lands to the caveator

this was subject to the condition that a formal sale and purchase agreement incorporating all the terms and conditions appearing in the letter and other usual terms and conditions was to be concluded on or before 18 March 1989, but it was not so concluded, and that consequently there was no concluded contract.

It was further contended by the registered proprietor that as the parties had failed to agree on two terms contained in the draft agreement of sale and purchase, namely, cl 3 (stakeholders clause) and cl 17 (making agreement binding on successors in title), there was no obligation on the part of the registered proprietor to execute the formal sale and purchase agreement. In particular cl 3 read as follows:

> The deposit sum hereinbefore mentioned in cl 2(a) has been paid to M/s Shearn Delamore & Co Advocates and Solicitors of No 2 Benteng, 50050 Kuala Lumpur (hereinafter referred to as 'the vendor's solicitors') before the execution of this agreement and the receipt of which is hereby acknowledged by the vendor. The vendor's solicitors are hereby authorized to release the deposit sum to the vendor on execution of this agreement.

Clause 17 reads as follows:

> This agreement shall be binding upon the successors in title of the vendor and the legal representatives and assigns of the purchaser.

By his reply, the caveator contended that the registered proprietor could not rely and is estopped from relying on the failure to execute the formal sale and purchase agreement on or before 18 March 1989 because the registered proprietor:

(a) did not intimate its non-acceptance of the incidental terms (cll 3 and 17) within the time fixed for signing the formal sale and purchase agreement,
(b) although it had sufficient time to consider whether it would accept the incidental terms included in the draft sale and purchase agreement, it did not do so timeously,
(c) notified its rejection of the incidental terms but only after the expiry of the time limited for the execution of the formal agreement of sale and purchase,
(d) did not after such rejection out of time allow the caveator reasonable time thereafter to execute the formal sale and purchase agreement omitting the incidental terms objected to, and
(e) was seeking, but should not, be allowed, to take advantage of its own default to avoid its liability to the caveator.

So far as the chargee was concerned, it was contended that as the charge was created nearly five years *before* the date of the alleged agreement, it was clear that the caveator had had notice of the prior interest of the chargee but had chosen to ignore the same and to enter into the alleged agreement. The case of *Hajjah Rajiah bte Haji Man* v *Tai Cheng Finance*[2] was cited in support.

In reply, the caveator has stated that he had requested the chargee's solicitors to disclose the amount outstanding under the charge so that if the registered proprietor did not pay the same then he would do so but there was no response to this enquiry. Again it was said that the motion by the chargee to remove the caveats had been filed without disclosing the amount due under the charge thus denying the caveator the opportunity to redeem the lands. It was contended that as a purchaser the caveator was entitled to redeem the lands to protect his rights under the alleged agreement and the chargee was not at liberty to deny him that right.

Clearly, as between the registered proprietor and the caveator the primary issue was whether the alleged agreement contained in the letter constituted a binding contract having regard to the words therein and also the actions and conduct of the parties as explained by all the surrounding circumstances, in particular, the contemporary correspondence.

I think it is not an unfair summary of the arguments advanced on behalf of the caveator if I said that his case is that the parties (the caveator and the registered proprietor) were content to be bound immediately and exclusively by the terms they had agreed upon in the letter whilst expecting to make a further contract in substitution for the first contract, containing, by consent, additional terms, being 'usual terms'. My research into the authorities has uncovered an illustration of such a possible case; it is mentioned by Lord Loreburn in *Love & Stewart* v *S Instone & Co*[3] at p 476 when he said:

> It was strongly in favour of the appellants that in the correspondence both parties spoke of a contract between them, and stated, or acquiesced in the statement, that, though a formal document was intended by both, their contract was meanwhile confirmed. It was quite lawful to make a bargain containing certain terms which one was content with, dealing with what one regarded as essentials, and at the same time to say that one would have a formal document drawn up with the full expectation that one would by consent insert in it a number of further terms. If that were the intention of the parties, then a bargain had been made, none the less that both parties felt quite sure that the formal document could comprise more than was contained in the preliminary bargain. But if the intention were that what was agreed in the first instance should be subject to the completion of the formal document then there was no bargain while that condition remained unfulfilled.

And perhaps, the same ideas expressed by Lord Loreburn were contemplated by Mr Ameer Ali in the Privy Council case of *Harichand Mancharam* v *Govind Luxman Gokhale*[4] when he speaks of subsidiary terms that a vakil might consider necessary for insertion in a formal contract, are sufficient grounds in fact and law for continuing

in force the caveat (per Lord Diplock in *Eng Mee Yong*'s case[1] at p 155).

With these principles in mind and having given the fullest consideration to submissions of counsel, I was satisfied that the caveator's claim did disclose a serious question to be tried as to whether there was any contract at all.

I next turned to consider the application by the chargee. I confess that I was at first blush much impressed by the submission of counsel for the chargee that the charge having been created nearly five years before the date of the alleged agreement, the caveator must be deemed to have had notice thereof by virtue of the doctrine of constructive notice. But, reflection revealed that the chargee's argument may be an oversimplification of the issue.

In *Eng Ah Mooi* v *OCBC*,[5] Salleh Abbas FJ at p 210 col 2 F to I said this:

> Just as a mortgage is not irredeemable, likewise a charge is not undischargeable. Under English law a mortgagee (this should read mortgagor) or any person interested in the mortgaged property has the right to demand (of) the mortgagee to redeem the mortgage on tendering the amount of debt together with interest thereon due on the mortgage. *Pearce* v *Morris* (1869-70) 5 LR Ch App 277, 230 and 231. We see no reason to hold that this rule of English law is inapplicable to the present appeal. In our view this rule is applicable although a lot has been said elsewhere about the differences between the common law mortgage and a charge under the Torrens system.

Accordingly, I felt bound to hold that the caveator had also succeeded in showing a triable issue as between himself and the chargee.

For the sake of completeness, I had also reminded myself of certain general considerations which I thought should guide me. I refer to the observations by that gifted lawyer Mr SK Das which were quoted with approval in *Jit Kaur* v *Parl Singh*[6] at p 201 and in *Macon Engineers Sdn Bhd* v *Goh Hooi Yin*[7] at p 58.

At p 325, on the purpose of a caveat, the learned author says this:

> It enables the caveator to retain the matter in status quo until his claim is adjudicated upon by the court and serves as a notice to the world at large of an outstanding equitable claim. The lodging of a caveat is really in the nature of the initiation of litigation, and only those persons should be entitled to initiate litigation who are entitled to litigate the matter of the dispute which is set up by the caveat, *Municipal District of Concord* v *Coles* (1905) 3 CLR 96 at p 108, per Griffith CJ.

And, at pp 347 and 348, on the approach which the courts should adopt when considering applications of the present kind, he says this:

> In dealing with applications for the extension of the operation of or for the removal of caveats against dealings with land it has always been the desire of the court to allow the parties the fullest opportunity to litigate any matter that may be in dispute between them. The court is loth to prevent parties litigating any right that they think they may possess: *In re Caveat of Lewis* (1903) 23 NZLR SC 581.

In all the circumstances, regard being had to the relevant principles, not forgetting the balance of convenience, the interests of all parties concerned and how best they may be protected, always keeping in mind the foreseeable positions at the final hearing, considerations of hardship in the meantime and other relevant discretionary factors, I was satisfied there were sufficient grounds for continuing in force the caveats, thus preserving the status quo, until the claim for specific performance is adjudicated upon by the Court.

In the result, both the applications were dismissed with costs and an early trial ordered of the suit herein.

Applications dismissed.

Solicitors: *Adnan Sundra & Low; Shearn Delamore & Co; Chew, Tan & Lim.*

Reported by *Teoh Ai Lin*

Re Lai Hua Kian, ex p Credit Corp (M) Bhd

HIGH COURT (KUCHING) — BANKRUPTCY NO 488 OF 1989
HAIDAR J
22 MARCH 1990

Bankruptcy — Bankruptcy notice — Issuing of — Whether solicitor could request for the issue of the bankruptcy notice on behalf of judgment creditor — Bankruptcy Act 1967, s 133 — Bankruptcy Rules 1969, r 9 & Form 4

The debtor made an application to object to the bankruptcy petition against him. The contention was that the petitioning creditor, being a corporation, had not specifically authorized any of its officers to issue the bankruptcy notice. Under s 133 of the Bankruptcy Act 1967, the petitioning creditor must appoint an officer under seal to act on its behalf.

Held, dismissing the debtor's objection and making a receiving order and an adjudication order:

(1) If a debtor intends to object to the creditor's petition, it cannot be done orally as r 117 of the Bankruptcy Rules 1969 (the 'Rules') provides that notice of his intention to oppose the petition has to be served three days before the hearing. However, in the circumstances, discretion was exercised under r 275 to give the debtor time to file the notice.

(2) The request for issue of a bankruptcy notice is prescribed in Form 4 to the appendix to the Rules. The form allows the solicitor to request for issue of the bankruptcy notice irrespective of whether the judgment creditor was a corporation or a firm or individual. It is clear that the request for issue of a